

Sanborn

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July 24, 2007

Via Federal Express

Robert Sanborn
Latent Case Manager
Riverstone Claims Management LLC
250 Commercial Street, Suite 5000
Manchester, New Hampshire 03101

Re: *Milacron, Inc. v. The Fairchild Corporation*
Case No. A0404162, Hamilton County Court of Common Pleas

Insured:	Fairchild Industries, Inc. and The Fairchild Corporation
Insurance Company:	Industrial Indemnity Company
Policy Numbers/Periods:	JU 910 7132 (01/01/90 – 07/01/90) JU 910 8125 (07/01/90 – 07/01/91) JU 910 9059 (07/01/91 – 07/01/92) JU 912 3654 (07/01/92 – 07/01/93) Unknown (07/01/93 – 07/01/94)
Insurance Company:	Westchester Fire Insurance Company
Policy Number/Period:	CUS 20030 (07/01/94 – 07/01/95)
Insurance Company:	TIG Insurance Company ("TIG")
Policy Numbers/Periods:	XLB915 19 59 (07/01/95 – 07/01/96) XLB915 22 71 (07/01/96 – 07/01/97)

Dear Bob:

Pursuant to your conversation with Todd Hoffpauir, the following is a brief history of the Jiffy Air Profiler, and of the Ohio litigation. We have also included several disks of documents, per your request.

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The Jiffy Profiler

Fairchild purchased VSI Corporation in 1980. D-M-E Company was a division of VSI at that time. D-M-E distributed, among many other products, a reciprocating hand tool used in the mold and die industry known as the Jiffy Profiler. Electric profilers were distributed from the 1970s through 2004. D-M-E began distributing a pneumatic Jiffy Air Profiler beginning in 1987, and continued distributing the product through 2004. The profilers were used to polish molds and dies.

In 1996, Fairchild entered an Asset Purchase Agreement with Milacron, whereby Milacron purchased the assets of D-M-E Company. Milacron went on to form a free-standing corporation named D-M-E Company, and D-M-E continued to distribute the electric and pneumatic profilers from 1996 until April 2004.

Missouri I

In January 2002, 14 personal injury plaintiffs filed separate actions in the U.S. District Court for the Eastern District of Missouri, Eastern Division, naming D-M-E as the sole defendant ("Missouri I"). The underlying plaintiffs alleged exposure to the profiler over several years and claimed the product was defective because its use subjected the user to a damaging level of vibration. The plaintiffs in Missouri I were John Bernosky, Kenneth Bond, Tony Bradley, Keith Davis, Brian Kelley, Stephen Kelley, Andrea Lazzareschi, Rob Nasello, Calvin Oyan, Shane Picker, Derrick Pickles, Anna Polach, Bradley Schlater, and Dale Schlater.

After litigating Missouri I for over 2 years, Milacron notified Fairchild of the lawsuits on January 29, 2004, seeking defense and indemnity from Fairchild under the terms of the Asset Purchase Agreement, and seeking statutory contribution. Fairchild notified its primary insurers of the claims, but its insurers took no action. Milacron went on to unilaterally settle all of the Missouri I actions at a series of mediations in the ensuing months, for a total of \$5,800,000. The breakdown is as follows:

John Bernosky	\$1,120,000
Kenneth Bond	\$ 750,000
Tony Bradley	\$ 400,000
Keith Davis	\$ 375,000
Brian Kelley	\$ 350,000
Stephen Kelly	\$ 350,000
Andrea Lazzareschi	\$ 325,000
Rob Nasello	\$ 350,000
Calvin Oyan	\$ 50,000
Shane Picker	\$ 375,000
Derrick Pickles	\$ 450,000
Anna Polach	\$ 100,000

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Bradley Schlater	\$ 450,000
Dale Schlater	\$ 355,000

As indicated, D-M-E Company has never manufactured the Jiffy Profiler or the Jiffy Air Profiler. The product was always manufactured in Europe. As can be seen from one of the enclosed pleadings, Milacron attempted to bring in the actual manufacturer of the profilers – Karl Fink – in Missouri I, but the court dismissed Karl Fink for lack of personal jurisdiction. Furthermore, Fairchild obtained the patent for the Jiffy Profiler in the early 1980s, and obtained the patent for the Jiffy Air Profiler in the early 1990s.

The Ohio Litigation

Milacron filed its Complaint against Fairchild on May 24, 2004, styled *Milacron, Inc., f/k/a Cincinnati Milacron vs. The Fairchild Corporation and RHI Holdings, Inc.*, Case No. A0404162. In its Complaint, Milacron set forth claims for (1) breach of contract; (2) contractual indemnity; (3) contribution; and (4) declaratory judgment. Fairchild filed third party claims against its primary insurers that provided coverage from 1982 through 2004.

As discovery progressed in the case, Fairchild learned that the underlying *Bernosky* plaintiffs had alleged exposure only to the Jiffy Air Profiler (pneumatic), which was distributed from 1987 to 2004. The case between Milacron and Fairchild proceeded to a bench trial on October 16, 2006. On the morning of trial, Milacron dismissed its contractual indemnity claims, and proceeded solely on its statutory contribution claim. The case was continued in progress in order to allow Milacron to gather additional evidence. The remainder of the trial was presented in the form of video trial depositions and stipulated exhibits. Attached is the judge's letter decision in the case, which will be reduced to judgment on or about August 3, 2007.

The coverage side of the case was bifurcated, and it will proceed in the event the case is not settled. Zurich was originally a third party defendant, but Fairchild has settled with Zurich and dismissed it, with prejudice, upon the payment of some of the defense fees. Zurich last insured Fairchild on January 1, 1986, over a year before the Jiffy Air Profiler began being distributed by Fairchild. Fairchild has also agreed to dismiss ISOP. At the time it filed suit, Fairchild believed ISOP insured Fairchild for domestic coverage, but later learned the policy was only for international coverage. The correct National Union policy covering the same time period was located, and Fairchild is seeking coverage under that policy. All Fairchild primary policies covering the period from 1987 to 2004 are enclosed in disk form.

Allocation

Enclosed is a chart setting forth the allocation of damages by year of exposure. This is based on Judge Martin's letter decision. In his letter, Judge Martin states that he found Milacron's allocation formula to be reasonable. That allocation formula – found at Exhibit A to Post-Trial Memorandum of Plaintiffs Milacron, Inc. and Milacron Assurance Ltd. – assigns Fairchild 100% of all exposure from 1987 to 1996, and 50% of all exposure from 1997 to 2003.

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We are also enclosing a second chart, which further divides the court allocation by primary insurance policy years. As you can see, there is exposure to the excess carriers from January 1, 1990, through October 1, 1996, in the amount of \$911,739.09. Fairchild is looking to each of its excess carriers to pay its pro rata portion of that amount.

The primary policies from January 1, 1990, through October 1, 1996, issued by National Union all have an endorsement that states:

If this Coverage Form and any other Coverage Form or policy issued to you by us or any company affiliated with us apply to the same "occurrence" the maximum Limit of Insurance under all the Coverage Forms or policies shall not exceed the highest applicable limit of insurance available under any one Coverage Form or policy.

The National Union coverage from January 1, 1990, through October 1, 1996, all carries a \$1,000,000 per occurrence limit and a \$250,000 SIR. The primary carriers and Fairchild have agreed that this claim arises out of one occurrence.

It is Fairchild's belief that its primary carriers will be willing to pay the amounts set forth in the Court Allocation by Carrier chart. Fairchild would like to settle the case for the amount of the judgment, as found by Judge Martin, plus pre-judgment interest. I have enclosed a copy of the Judgment Entry proposed by Milacron. Milacron has indicated it will force Fairchild to post a bond if the judgment is finalized. At this point, Fairchild does not wish to appeal the judge's decision.

Documents

We are enclosing a number of documents that will assist your efforts to get up to speed as quickly as possible. The following are the documents contained on the enclosed disks:

1. The two allocation charts referenced above, and Judge Martin's Letter Decision, on which the charts are based.
2. Primary Policy Master List from 1987 to 2004.
3. Copies of the primary policies from 1987 to 2004.
4. List of Fairchild's excess carriers and policy numbers from 1986 to 2004.
5. Copies of the primary carriers' reservation of rights letters – we have not received any reservation of rights letters from any excess carrier.

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6. Copies of the relevant pleadings from the underlying *Bernosky* lawsuits.
7. Redacted Release from underlying *Bernosky* cases.
8. Copies of the relevant pleadings from the Ohio action.
9. Copies of technical materials relating to the Jiffy Air Profiler and Jiffy Profiler. (The D-M-E Company plant is in Michigan. When Fairchild sold off its division, all of the D-M-E paperwork stayed with that plant and has been under the control of Milacron since that time. Therefore, Fairchild had very few documents relating to D-M-E when the *Bernosky* suits were filed in 2002. The documents enclosed were obtained in discovery from Milacron. This is the only known paperwork that preceded the sale of D-M-E to Milacron.)

We believe most of the information you will need to respond to Fairchild's tender is contained in the enclosed documents. Please let us know if you have any additional questions, as we are sure you will.

Our goal is to attempt to get this case settled before it goes to judgment on August 3, 2007. We ask that you do everything in your power to achieve that result.

We look forward to working with you on this matter.

Very truly yours,

MONTGOMERY, RENNIE & JONSON



GEORGE D. JONSON

GDJ/rvk
Encl.
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	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	TOTAL
Bond, Kenneth			50,000.00	50,000.00	50,000.00	50,000.00	50,000.00	50,000.00	50,000.00	50,000.00	25,000.00	25,000.00	25,000.00	25,000.00	25,000.00	25,000.00	25,000.00	876,000.00
Dele, Keith																		
Kelley, Steven	22,875.82	22,875.82	22,875.82	22,875.82	22,875.82	22,875.82	22,875.82	22,875.82	22,875.82	22,875.82	8,006.54	8,006.54	8,006.54	8,006.54	8,006.54	8,006.54	8,006.54	253,871.82
Nesallo, Rob				43,750.00	43,750.00	43,750.00	21,875.00	21,875.00	21,875.00	21,875.00	21,875.00	21,875.00	21,875.00	21,875.00	21,875.00			240,825.00
Picher, Shante									34,090.91	17,045.46	17,045.46	17,045.46	17,045.46	17,045.46	17,045.46	17,045.46	17,045.46	183,409.13
Pelach, Anne							5,882.35	5,882.35	5,882.35	5,882.35	2,941.18	2,941.18	2,941.18	2,941.18	2,941.18	2,941.18	2,941.18	44,117.66
Schluter, Dale	20,882.00	20,882.00	20,882.00	20,882.00	20,882.00	20,882.00	20,882.00	20,882.00	20,882.00	20,882.00	10,441.18	10,441.18	10,441.18	10,441.18	10,441.18	10,441.18	10,441.18	281,502.26
TOTAL	20,882.00	43,767.82	121,882.82	164,382.82	276,828.82	314,170.82	367,870.82	367,870.82	436,711.83	216,691.90	216,691.90	216,691.90	216,691.90	217,528.34	113,532.41	75,199.07	82,817.53	3,346,339.54

INSURERS	POLICY YEARS	COURT ALLOCATION	PRIMARY	SIR	EXCESS
AIG	1987	20,882.00		20,882.00	
	1988	43,757.82		43,757.82	
	1989	121,882.82		121,882.82	
	01/01/90-10/01/96	1,811,739.09	750,000.00	250,000.00	911,739.09
	10/01/96-10/01/97	271,448.88	171,448.88	100,000.00	
	10/01/97-10/01/98	216,691.90	116,691.90	100,000.00	
	10/01/98-11/15/99	243,777.61	143,777.61	100,000.00	
	sub-total	2,830,178.12	1,181,916.39	736,522.64	911,739.09
ROYAL	11/15/99-11/15/00	217,420.97	217,420.97		
	11/15/00-12/15/01	135,882.55	135,882.55		
	12/15/01-12/30/02	79,929.59	79,929.59		
	12/30/02-12/15/03	79,366.80	79,366.80		
	sub-total	512,709.91	512,709.91		
HARTFORD	12/15/03-12/15/04	3,450.73	3,450.73		
	sub-total	3,450.73	3,450.73		
GRAND TOTAL		3,346,338.76	1,698,077.03	736,522.64	911,739.09